

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

SUZANNE CAREY,

Plaintiff,

v.

PIERCE COUNTY SUPERIOR COURT  
DOMESTIC VIOLENCE UNIT, et. al.,

Defendants.

CASE NO. C10-5592BHS

ORDER DENYING PLAINTIFF'S  
MOTIONS AND ORDERING  
PLAINTIFF TO SHOW CAUSE

This matter comes before the Court on Plaintiff's ("Carey") motion to submit pretrial evidence and to enter default against Defendants (Dkts. 19, 21). Also before the Court is Defendants' motion to dismiss pursuant to Fed. R. Civ. P. 12(b)(1) and 12(b)(6) and their motion to limit Carey's filings (Dkt. 23). The Court has considered the pleadings filed in support of and in opposition to the motion and the remainder of the file and hereby denies Carey's motions for default and to submit pretrial evidence. The Court also hereby grants in part and denies in part Defendants' motion and orders Carey to show cause for the reasons discussed herein.

**I. PROCEDURAL HISTORY**

On December 1, 2010, Carey filed a motion to submit pretrial evidence. Dkt. 19. On December 9, 2010, Defendants moved to dismiss Carey's claims pursuant to Rule 12(b)(1) and 12(b)(6) of the Federal Rules of Civil Procedure; they also moved the Court

1 to limit Carey's filings. Dkt. 21. On December 13, 2010, Carey moved for default against  
2 Defendants.

3 The parties did not file briefs in opposition to these motions.

## 4 **II. DISCUSSION**

### 5 **A. Carey's Motions**

#### 6 **1. Motion for Default**

7 Because Defendants submitted a motion to dismiss and are, therefore, participating  
8 actively in this litigation, a motion for default is improper. Fed. R. Civ. P. 55(a) (not  
9 permitting default where party has otherwise defended). Therefore, the Court denies  
10 Carey's motion for default with prejudice.

#### 11 **2. Pretrial Evidence**

12 Carey's motion to submit pretrial evidence is premature at this point in the  
13 litigation. Therefore, the Court denies this motion without prejudice.

### 14 **B. Defendants' Motion to Dismiss and to Limit Carey's Filings**

#### 15 **1. Motion to Dismiss**

16 Defendants move the Court to dismiss this case pursuant to Fed. R. Civ. P.  
17 12(b)(1), (6). Carey has not opposed the motion. When "a party fails to file papers in  
18 opposition to a motion, such failure may be considered by the court as an admission that  
19 the motion has merit." Local Rule CR 7(b)(2). Although the Court could grant  
20 Defendants' motion to dismiss on this basis, the Court provides Carey with some latitude  
21 given that she is proceeding *pro se*.

22 Therefore, the Court reserves ruling on Defendants' motion to dismiss and orders  
23 Carey to show cause why this Court should not dismiss her claims for the reasons given  
24 in Defendants' motion to dismiss.  
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1           **2.     Motion to Limit Carey's Filings**

2           The Court grants Defendants' motion to limit Carey's filings as follows: Until  
3 otherwise notified, Carey is not to make any filings in this matter that do not pertain to  
4 Defendants' motion to dismiss.

5           **C.     Notice**

6           Rule 12 informs a plaintiff of what they must do in order to oppose a motion to  
7 dismiss under Fed. R. Civ. P. 12(b)(6). Generally, a motion under this rule must be granted  
8 when a plaintiff has failed to state a claim for which the law provides relief or the plaintiff  
9 has failed to plead facts that would support a theory available under the law – that is,  
10 where either the law cannot help the plaintiff, or the plaintiff cannot provide facts  
11 sufficient to support his or her case under the law, the party who asked for dismissal is  
12 entitled to judgment, which will end a plaintiff's case. When, as here, the motion to  
13 dismiss is based on an alleged failure to plead facts to support a cognizable legal theory, a  
14 plaintiff may not be able to simply rely on what his or her complaint states. Instead, where  
15 a plaintiff's complaint is factually deficient, a plaintiff must set out specific facts in  
16 declarations, or authenticated documents, or an amended complaint that contradicts the  
17 facts shown in a defendant's documents and shows that there are facts that, if believed,  
18 would support a cognizable legal theory. If Carey does not adequately respond to  
19 Defendants' motion to dismiss under Fed. R. Civ. P. 12(b)(6), dismissal may be granted  
20 and there will be no trial.

22           Additionally, if Carey chooses to respond to the motion, she will also have to  
23 similarly address each of Defendants' other bases for dismissal, including Fed. R. Civ. P.  
24 12(b)(1) (subject matter jurisdiction). If and when Carey responds in opposition to  
25 Defendants' motion to dismiss, Defendants may then file a reply on or before January 28,  
26 2011.

**III. ORDER**

Therefore, it is hereby **ORDERED** that

- (1) Carey's motion for default is **DENIED**;
- (2) Carey's motion to submit pretrial evidence is **DENIED**;
- (3) Plaintiff **SHALL** file a response to this order to show cause on or before January 21, 2011, as discussed herein; and
- (4) Defendants' motion to dismiss and limit Carey's filings is **GRANTED in part** and **RESERVED in part** as discussed herein. The motion to dismiss is **RENOTED** to January 28, 2011.

DATED this 10th day of January, 2011.



BENJAMIN H. SETTLE  
United States District Judge